

BOARD OF ZONING APPEALS  
MINUTES  
September 20, 2005

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on September 20, 2005, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following board members were in attendance:

JAMES RUANE, ERMA MARKHAM, BICKLEY FOSTER, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JUSTIN GRAHAM

The following board member was not in attendance:

MICHAEL GISICK absence.

The following Planning Department staff members were present:

DALE MILLER, Secretary.

YOLANDA ANDERSON, Recording Secretary.

The following Office of Central Inspection staff members were present:

HERB SHANER– Office of Central Inspection present.

SHARON DICKGRAFE – C.O.W. Law Department

RUANE For our secretaries benefits, please make certain you come to the microphone and that you introduce yourself and include your street address so we can make sure that we can make contact with you for any follow-up. Please limit your comments to three minutes. Looks as though, we have a brief agenda. If you need more than that, please tell me on the outset. For the record, I have now been sworn in and have been reappointed by the City Clerk that has signed the oath of office. As we go forward, we will look at our agenda and we will approve the agenda as submitted.

RUANE Item number one is election of officer. We have someone from staff or legal explain what we need to do and the term limits may be applicable, if any.

DICKGRAFE Bylaws provide that you need to appoint a chair and a vice chair. The chair can only serve for two consecutive terms. You can elect a chair and vice chair. You can do one motion to elect two. Mr. Ruane, I am not certain whether you have been chair for more than one term or not?

DICKGRAFE I think it is two terms. So you are not eligible to serve as chair. Someone else will need to be chair; although, you are eligible to serve as vice chair.

RUANE Thank you for that very important clarification. Nominations are to come from us as a Board. Let us talk about it. Who has interest in performing as chair, is my first question?

MARKHAM Nominates Bickley Foster as Chair.

ANTHIMIDES Bickley do you accept the nominations?

FOSTER Yes, I served for two years the first time I was on about 5 and half ears ago. So I have not serve in about 3 and half years and if that is the wish of the Board I would be glad to do it.

MOTION Carried 5-0-1

RUANE Therefore, it appears by acclamation our new chair is Bickley Foster.

GREENLEE I move that Erma Markham be nominated as vice chair.

RUANE Is not Bickley as chair effective immediately?

DICKGRAFE Well he vacated his seat rather quickly

FOSTER I believe we are at the point were we are ready for a motion to nomination the vice chair.

GREENLEE Mr. New Chairman, I move that Ms. Markham be nominated as vice chair.

MOTION Carried 5-0-1

FOSTER We will now continue our meeting for the approval of the July 26, 2005 BZA minutes. I believe most of the member here were present for that meeting, do I hear a motion to approve the minutes?

GREENLEE I move to approve the July 26, 2005 minutes.

MOTION Carried 6-0

FOSTER We are now ready for our case BZA2005-00045. I will be calling on the staff to make presentation and they will call on the applicant to make their presentation and anyone else who wants to speak. We will begin by calling on Bill to make his presentation.

LONGNECKER **BACKGROUND:** The applicant proposes to replace an existing 20-foot (x) 15-foot detached garage on the subject corner lot with a 22-foot (x) 32-foot detached garage. The existing garage is located approximately 3-feet from the Waterman Street right-of-way (ROW). The applicant is requesting that the proposed garage be located 6-feet off of the Waterman ROW (see attached site plan). Per the Unified Zoning Code (UZC), the "SF-5" Single-family Residential zoning district requires a 15-foot street side yard setback along the subject corner lot's Waterman Street frontage; See UZC, Art.II, Sec.II-B-7g., corner lot, and Art.III, Sec.III-E.6, setbacks on corner lots. The applicant has requested a variance to reduce the current UZC's 15-foot street side yard setback to 6-feet in order to replace the existing detached garage. A variance is required to

Page 2

reduce building setbacks by more than 20 percent.

The applicant proposes to have access to the new garage off of Waterman rather than the existing garage's access off of Rutan Avenue. The applicant has torn out the west portion of the drive off of Rutan to the existing garage, keeping the eastern portion of the drive, onto Rutan, for off street parking. The proposed orientation of the new garage, with its drive onto Waterman will allow the applicant to preserve more of his south street side yard and back yard as open space. In the three short blocks between Hillside Avenue and Vassar Avenue there are, not including the applicant's existing garage, four other detached garages with access onto Waterman and one attached garage with access to Waterman. All are 6-feet or closer from the Waterman ROW. All are on platted lots that were recorded before 1920. All of the lots' single-family residences were developed prior to 1926. Prior to 1996, street side yard setbacks, if not platted, for single-family residential zoning were not less than 6-feet or if the lot was recorded before October 1, 1928, not less than 3-feet. The applicant's corner site, Lot 18, BD Allen's Addition, was recorded with the Register Deeds November 5, 1910.

**ADJACENT ZONING AND LAND USE:**

NORTH	"SF-5" Single-family residences
SOUTH	"SF-5" Single-family residences "TF-3"
EAST	"TF-3" Tri-plex & Single-family residences
WEST	"SF-5" Single-family residences

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the property was platted in its current configuration in 1910 (Lot 18, B.D. Allen's Addition) and the residence on the lot was constructed in the 1920s, with the existing garage appearing to be constructed closer to the 1920s than today; however, the zoning regulations that established the 15-foot side yard setback requirements were not established until 1996, long after the property had already been developed.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as many adjacent properties are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to comply with the street side yard setback requirements will prevent the applicant from upgrading his property with no corresponding public benefit.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common.

**SPIRIT AND INTENT**: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the street side-yard setback requirements is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not negatively impact this intent. Waterman Street is a short residential street that dead-ends at College Hill Park. It basically serves the immediate area's residences, thus the vehicular traffic generated is primarily limited to those living in the immediate area, thus the impact of the placement of the garage as proposed, will have a minimum impact on safe vehicular and pedestrian traffic along this portion of Waterman Street.

**RECOMMENDATION**: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the street side setback from 15-feet to 6-feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The setback reduction shall apply only to the "22-foot (x) 32-foot detached garage" as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
4. The resolution authorizing this variance may be declared null and void, upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER        Do I see that the area in back have a large tree? Would that make it difficult to set the garage further back?

LONGNECKER        The one that you are referring to would be this one, and that would wipe out that tree. Yes, it would take up the back yard.

FOSTER        I can not see how wide this lot is, but it looks very narrow. Is this a 50ft lot?

LONGNECKER        There are two lots 25ft wide a piece or 50ft wide along the Rutan side. It is a narrow deep lot

FOSTER        So, 28ft of that would be a garage. It would be using up a lot of it for this garage.

LONGNECKER        Well if you have the 15ft back plus the 24ft, actually 39ft, you would have eleven feet of yard left.

FOSTER        Are there any questions from any other members?

MARKHAM        Yes, how is the foundation there or the retaining wall going to be removed?

LONGNECKER Yes, the applicant has timed the proposed development of this new garage will also the replacement of this retention walls. As far as labor and money, he plans to do both projects at the same time.

MARKHAM Yes, well how far does the retention run, does it run across just his yard or does it run along the street any place.

LONGNECKER The retaining wall is right on his property.

MARKHAM Because I was thinking he will need to do something to level it off or do something to hold that soil in place.

LONGNECKER Yes, but it just inside his property line. Yes, the way it is toward Rutan. Yes, basically keeping his yard in place.

MARKHAM Yes.

LONGNECKER Again the retaining wall is just inside his property line

FOSTER Is there any other questions from any other members? Bill, I noticed it does not mention removing the existing garage or where they plan to place the new one or is that part of the conditions?

LONGNECKER We stated in first sentence of the background the applicant's propose to build and replace he existing garage. If we need more specific language, we can say that the existing garage has to be down and gone before a replacement garage can go in.

FOSTER Okay. I think that is something you may want to consider.

FOSTER Thank you, Bill.

FOSTER I will call on the applicant for his presentation. Please give your name and address.

FORD My name is Tod Ford. My wife and I are the current residents at 255 S. Rutan. I think Bill has done a great job in covering the general intent of why I am choosing to build a new garage. To further answer some of the questions all of you had. The current garage would not be able to remain intact while the new garage is being constructed because of the location I proposed for the new garage. The new garage will not impact the large tree that you see in the foreground that is on the city's right-a-way. The other question relative to the placement of the garage is what impact would that have on my yard if I were to abide by or conform to the 15ft yard setback? Essentially that would take out the entire proposed patio area that I am developing with the garage. It would leave me with no back yard. The other issue is that if you look at my property, it is a two level piece of property in the sense that there is a higher level toward the Rutan side. As you can see, it drops off down to Waterman side towards Hillside. By pushing the garage down further on the site, it would not solve the problem. It would create a major drainage problem behind my

garage and what was left between my garage and the property line. As of right now, this is a minimal impact to my site. Having to set it 6ft off the property line, it will maintain a positive drainage on my current site. It will also aesthetically enhance and improve my property and be within the architectural context of my house currently. The last point is, being a designer and an architect I understand and have recognized the existing fabric of the neighborhood and the garage. What I propose to build is based on the current fabric of the neighborhood at the turn of the century, especially 1910. My house was originally built in 1920. When that house was originally built in the 1920, they called that garage a model T garage. It worked for a model T but it does not work for my car or anyone else's car today. Part of my improvements is trying to put a garage on the site that my wife and I can park in and become a usable amenity to my property. On that note, that is why I have made this proposal. I appreciate the board for reviewing it and commend the city for taking an interest in this project. Thank you.

FOSTER Mr. Ford will you wait a moment for questions?

FORD Okay.

FOSTER You have given a lot of careful thought to this. Are there any questions?

RUANE Mr. Ford, I appreciate the clarity of your drawings and particularly how it illustrates the lack of impact upon the trees you have at your house. Is your request for the proposed two-car garage or for the alternative one car garage or for variance to allow you to make the selection on down the road?

FORD Due to the current price of construction and it being a very unanticipated time right now with the hurricanes, and not knowing where my exact my cost. My preference is to build the 32ft x 22ft garage but not knowing what it is exactly going to cost me. I needed to propose an alternative of a 24ft square garage. I am asking the board to give me the lead way to build the size garage I feel is appropriate. As well as understanding, that I have delicately place it within the fabric of the neighborhood. But that is the board decision on how they would go about it. It is difficult for me, at this point, to know which size I am going to build because I did not proceed with construction documents or get bids on that garage until I knew for sure whether I was going to get the variance. That is why I produced two site plans for your review.

RUANE If I don't use the words to give you that flexibility, I ask that you correct me, okay?

FOSTER Is there any other questions from any others?

GREENLEE If I understand what you just said, if your cost come in higher than what you anticipate you would like to smaller garage but that would not preclude you from building the larger garage at a later date if you wish to add on to it is that correct?

FORD: It could potentially, but I doubt it. I am 99% sure that I will probably build the garage once and not necessarily put an addition on it in the future. I am not certain

on that either. One thing is, I oversized the garage by 32ft x 22ft deep because I did not think I would ever build anything larger. If I abided by that 6ft setback, the board would not have issues with it. Having further discussed it, my feelings are that you may wish me to proceed with an alternative garage that being a 24ft square garage. I do not think I would ever build anything smaller than 24ft square because it is not that usable to me. Did that answer your question?

GREENLEE I think so.

FOSTER Are you aware Mr. Ford of condition 2, does that present a problem to you, it mentions 22 x 32 ft?

FORD It does somewhat because say for instance I decided to build something that was 30ft long by 20ft 6in deep. If you are going to strictly interpret that condition being 32ft x 22 ft, or 24ft squared then obviously I am going to work within those constraints.

FOSTER What condition two would do is only allow the variance for the distance of the setback of the garage but not the entire length of your lot. So, it is important as to what the size is, and that it may be commented. You do need some flexibility?

FORD I do need flexibility.

FOSTER Only the area that you proposed for the garage.

FORD You could say that you are granting a variance for a 6ft side yard setback no larger than 32 x 24 feet deep or smaller? Therefore, if it is smaller, you would not have a problem with it.

FOSTER Is there any other questions?

MARKHAM Are we giving the variance for the setback or for the size of the garage?

DICKGRAFE The variance is for a 6-foot setback.

FOSTER Out of 15 feet.

MARKHAM Do we need to know the size of the garage?

DICKGRAFE Staff wants to be comfortable with the size of the garage that is being approved to have control and a better idea of what and where he is going to build. Also at this particular site, there are some traffic engineering concerns and you would not want the garage any bigger as it would cause encroachment issues.

FOSTER By seniority, we will go to Dale first.

MILLER Staff would not oppose a motion that would approve either one of these options and we will leave it up to him to build whichever one. Recognizing that the 32' x 22' or smaller and meet the 6ft setback it would meet the spirit and intent.

FOSTER How would you reword condition number two?

LONGNECKER The reason we wrote it like this is because the site plan we have show the 32'x22' garage. The applicant's alternate plan shows 24'x 24'. Staff would read it as to allow a 6ft street side setback for a maximum of 32ft along the Waterman frontage and any thing below. Do you see a problem with that Dale?

MILLER No.

LONGNECKER The maximum is going to be 32ft and we set it a certain distance. We need dimension control to show how far the garage is going to off from the corner. From that property line to Rutan to the set of the garage, that would be the beginning of the 6'ft variance that will be the maximum of the 32ft along that waterman frontage.

FOSTER- Do you know how many feet from corner?

LONGNECKER No. We can get it. We have 25.7ft for the existing drive and approach that we will also ask to be retained and kept as part of a vacation order for off-street parking. The applicant can provide the dimension on where the variance is going to start for the 32ft size. We will have a revised site plan that we can stamp off on.

MARKHAM Can we rephrase where he has said, "he's replacing the existing garage".

LONGNECKER We have 10ft between the back of the house and the garage where he proposes to place it. We do have some control here with the existing site plans.

MARKHAM Give the upper limits and the lower small garage limit, he would be free to work within those limits.

RUANE I would like change the wording to expedite to the conclusion we are trying to reach.

FOSTER Do we have any more input from Mr. Ford or Bill?

FOSTER Are you working on a motion Bill?

LONGNECKER Yes.

FOSTER I think Mr. Ruane has worked on it. Also when the motion comes, I would like to see that it includes the present garage be removed.

MARKHAM Yes.



LONGNECKER I included in number one. The site shall be developed and in substantial conformance with the approved site plan and elevation drawings. The existing garage must be removed prior to construction of replacement garage. Also, retain the 25ft of eastern driveway onto Rutan for off street parking. Condition 2, we said, the set-back reduction shall begin 10ft from the back of the house and proceed 32ft west of there. This will allow the maximum size garage or the 24ft whichever one he choses to build.

FOSTER Any other questions? We will open it to our audience to speak on the topic. Seeing no one, we will bring it back to the board. Mr. Ruane, do you have a motion?

RUANE Yes, I move to approve the variance with the information provided in the Secretary's report and in particular I incorporate by reference Bill's remarks that was read to us that added specific language to the end of condition number 1 and say, "I do not have any improvement to make to condition number two". Going back to the motion, I will approve the variance with the printed information along with the supplement and move that the Board accept the finding of the fact as set forth in the secretary report all five conditions setout in section 2.12.590B of the City Code as necessary for the granting of a variance. The variance is granted subject to the conditions as modified set out in the secretary's report.

RUANE Further clarification is best represented by Fords' attachment.

FORD What I am requesting is the 32ft of frontage along the waterman street and that the dept be no more than 24ft. Therefore, I can build the 32ft or 24ft garage.

RUANE What is this attachment?

FORD First page is 32ft x 22ft, second page is garage related to the first page, third page is 24ft x 24ft.

RUANE Will you be happy if the variance says you can do either one of these options that you chose?

LONGNECKER We are looking at a maximum of a 6ft setback for a length of 32ft along Waterman starting 10ft to the east of the house.

RUANE Exactly, the variance we approve has no bearing on the dept of the garage is 22ft or 24ft.

FORD That is right.

RUANE Correct.

LONGNECKER The department is not an issue.

RUANE Let the minutes reflect that the motion reflect this.

MOTION Carried 6-0

FOSTER Thank you for you good information.]

RUANE Thank you staff. I appreciate the way you show the neighborhood context.

LONGNECKER You are welcome and have good afternoon.

FOSTER We have new members. Cars parked in front of this garage would be parked on the sidewalk. This is an important variance when you consider it. Herb is a esteemed member of the Central Inspections staff with important to any projects we had in the past is bad or good or failing or what?

SHANER: Office of Central Inspections, zoning, we had a BZA2004 for 2326 Southeast Blvd. It was a variance to reduce off street parking for a manufacturing facility from 54 to 2 everything has been done according to requirements of the Board on the variance. They have the number of required parking places. It is completed.

FOSTER Any questions? Thank you.

SHANER I want to update on the baseball field at 29<sup>th</sup> and Greenwich. I talked with Doug Cooper on the September 15<sup>th</sup> and they are looking for a non-profit group to send in a letter of intent to the City to guarantee phase 1. That will be brought before the City Commission whenever they get the letter. That is the reason nothing is happening out there now.

FOSTER Are we still within 6-month period of time?

SHANER No sir.

FOSTER How long has it been?

SHANER This was January 27, 2004.

FOSTER To the newer BZA member, Our BZA cases are only good for only how long?

DICKGRAFE Normally it is a year.

FOSTER We are past that time also. Are they aware that they need to bring it back for an extension or what? Dale do you have any comments now that we are one year and a half into this?

MILLER I assumed, we should leave it alone. When they find someone who is willing to do that then they can come back to the board and ask permission for it to be extended or get new permission.

FOSTER Is the City building this?

MARKHAM Neighborhood Association.

MILLER I understood there is a public private deal. It was going to be a joint effort. I do not know the details. The private sector would donate land and the city would provide the improvements. I do not know the details.

FOSTER So who would appeal if necessary?

MILLER I recommend for the Board to do anything but to leave it the way it is and whenever someone comes forward if this is an obstacle, they can ask for permission or ask for the old case to be revived and extended. At this point, I do not think it's worth giving an extension if no one is available to make good use of it.

FOSTER Should we assume that our standards for such an approval has not changed during this period of time?

DICKGRAFE Depending on how your resolution is written. If it is not done, it is not null and void. My thought are if it has been eighteen months and it has not been developed you need to start that process over to allow you consider any other changes in that development that may or may not have affected your decision at that time. I would need to look at the resolution. I am confident that we word that if it is not developed within the timeframe it becomes null and void. I think they need to start over now.

MILLER Either way there is a solution to the problem.

FOSTER If they have wanted it to be grandfather in, they would have needed to start some part of their project during that first year.

RUANE They would need to do something? I do not think we need to do anything because it could prevent them to get this done.

FOSTER We are counting on Central Inspections permit process to bring this to their attention.

RUANE As we do everyday.

FOSTER Right. Are there any other questions?

MARKHAM When will they need to revisit this Board in order to get started? Will they notified advising that they did not complete it within a year and a half? If you are going to complete this project you will have to go back through the BZA process?

SHANER That would be Mr. Miller.

MILLER      We have an application tracking system. Should they need a permit, the permit writer would use tidemark to check the case and find the letter and see that the timeframe is expired and they would be advised at that time.

FOSTER:      Any other comment?

Adjournment      2:20p.m.